IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04/07/2003

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CRIMINAL ORIGINAL PETITION No.8130 OF 2003
AND
CRL.M.P.No.2862 AND 2863 OF 2003.

Mrs.G.Sumati ... Petitioner

-Vs-

State of Tamilnadu,
represented by
The Inspector of Labour,
Dindugal. ... Respondent

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure for the reliefs as stated therein.

For petitioner : Mr.Rangarajan

For respondent : Mr.A.N.Thambidurai,
G.A. (Crl.side)

:O R D E R

The above criminal original petition has been filed under Section 4 82 of the Code of Criminal Procedure praying to call for the records in STC.No.843 of 2001 by the Court of Judicial Magistrate, Vedasandur and quash the same as against the petitioner and for the other reliefs as found in the prayer column of the petition.

2. The petitioner would submit that the case is not maintainable against her on ground that the petitioner is a whole time employee and the General Manager of the Industrial Development Bank of India, which engaged in the business of financing medium and large scale industries; that she has been appointed as a Nominee Director in the Board of G.K.Steel and Allied Industries Limited (the first accused in the above case) and was never in charge of or concerned with the day-today management of the first accused company and that such arrangements have been made in accordance with the terms and conditions of the loan agreement and other documents executed between the said company and the Industrial Development Bank of India; that the petitioner's nomination to the said Board had also expired on 10.4.2001 itself vide the withdrawal of nomination by I.D.B.I. from the Board of the said company, prior to the commission of the alleged offence; that as per

Section 30A of the Industrial Development Bank of India Act, 1964, `a Director appointed in pursuance of an arrangement entered into between IDBI and an industrial concern does not incur any obligation or liability by reason only of the person being a nominee Director or for anything done or omitted to be done in good faith, in discharge of duties as a Director or anything in relation thereto.' On such grounds, the petitioner has come forward to seek for the relief extracted supra.

3. The learned counsel appearing on behalf of the petitioner would submit that since the petitioner is fully entitled to the benefit of Section 30A of the Act, he would pray for the grant of the prayer of the petition.

4. On the contrary, the learned Government Advocate on the criminal side would lay emphasis on the operative portion of the Section that being a Director, `for anything done or omitted to be done in good faith in the discharge of his duties as a Director or anything in relation thereto' and it is a qualified privilege conferred on such Directors who acted `in good faith' and whether in the instant case, the petitioner has acted in good faith or not is a point that is to be determined on facts for which the trial is a must and would pray to dismiss the above application.

5. In consideration of the facts pleaded and the law covering the subject, having regard to the materials placed on record and upon hearing the learned counsel for both in the manner aforementioned, if a decision has to be taken in this criminal original petition, it must be mentioned that the decision rests on the question of law i.e. Section 30A(2)(b) of the Industrial Development Bank of India Act, 1964 and whether such Director has acted in good faith or not is a question of fact which could be determined only in the trial and if the trial Court arrives at the conclusion that this particular petitioner has acted only `in good faith' and not `mala fide', it is up to the trial Court to decide on such facts and circumstances encircling the whole affair regarding the petition and it is not up to this Court to sit on the decision of such factual points as suggested by the very Section itself and therefore so far as this question of law is concerned, this Court is left with no choice but to decide that the petitioner is not entitled to any relief and the only conclusion that could be arrived at in the given circumstances is to dismiss the above application.

In result, there is no merit in the above application and the same is dismissed accordingly.
However, the petitioner, since being a lady, it is further ordered dispensing with her personal attendance before the trial Court for all the hearings, barring those occasions when the case will be posted for preliminary questioning, final questioning under Section 313 Cr. P.C., delivery of judgment etc. when the trial Court will be at liberty to summon the petitioner in the manner provided under Section 205 Cr.P.C.

Consequently, Crl.M.P.Nos.2862 and 2863 of 2003 are also dismissed.

Index: Yes
Internet: Yes
Rao

To
1.The Inspector of Labour,
Dindugal.

2.The Judicial Magistrate,
Vedasandur.

3.The Public Prosecutor,
High Court, Madras.